

Death penalty in India: Justice or Revenge?

Abstract

Despite the technological and economic advancement in the contemporary era, there is a troubling rise in violent crimes.

This paper explores whether capital punishment in India serves the cause of justice or merely satisfies a societal desire for retribution. Through the crime data, statistics from NCRB and provisions from the Indian constitution, this paper sought to examine the moral and legal justifications of death penalty.

Although courts sentence numerous individuals to death annually, it remains contentious whether such punishment adequately addresses justice or exacerbates a cycle of violence. As quoted by Kevin Kennedy in his article, "Severity only has a deterrent impact when the certainty level is high

enough to make the severity salient.” This quote becomes especially important while deciding the punishment for a crime as the punishment must not only be just but also function as a reformative tool within a society. Accordingly, the paper also examines whether the death penalty deters the crime or paradoxically, causes the state to mirror the culprit in the way that it actually condemns.

Introduction

The Death penalty, also known as capital punishment and historically called judicial homicide,¹ is the state sponsored killing of a person as punishment for actual or supposed misconduct. Etymologically, the term “capital” is derived from the Latin word “**capitalis**” which means concerning the heads, referring to execution by beheading.² It has been first used by the code of king Hammurabi of Babylon, which enshrined the death penalty for 25 separate offences, dates

¹ Shiply, Maynard (1906), “The Abolition of Capital punishment in Italy and San Marino”. American law review. 40 (2): 240-251 – via HeinOnline

² Kronenwetter 2001,p. 202

back to eighteenth century B.C., when the first documented death penalty regulations were initially put into place.³

Crimes punishable by death penalty are called capital crimes or capital offences. Some of the capital crimes listed in Indian Penal Code (IPC) are murder, rape, treason, fabricating evidences.

Under Criminal procedure code of India 1898, death was the default punishment for murder and required concerned judges to give reasons in their judgment if they wanted to give life imprisonment instead.⁴ However, the requirement for written reason was later amended in 1955. Moreover, in 1973, by an amendment in crpc, life imprisonment became the norm and the death was to be imposed only in exceptional cases.⁵

According to Amnesty International, 54 countries retain the death penalty in active use while 112 have already abolished it.

³ Snell, Daniel C. Life in the Ancient Near East, 3100-322 B.C.E. Yale University Press, 2005.

⁴ Criminal Procedure Code, 1898

⁵ Criminal Procedure Code (Amendment) Act, 1973

According to the data collected by Amnesty International, the top three countries in terms of the number of executions are China, Iran and Saudi Arabia.⁶ There are countries which do not publish any information about the use of capital punishment. Even China has not published its complete statistics and the number is still vague.

The success of a crime prevention policy in general is evaluated based on:

- Its effectiveness in preventing citizens from even considering breaking the rules of law or abiding by them out of habit
- The degree to which it can avert habitual offending from emerging
- The degree to which the policy can make those who consider acting in breach of the law choose not to do so.⁷

⁶ Amnesty International(2023). Death Sentences and Executions 2022. Retrieved from <https://www.amnesty.org>

⁷ Paternoster, R. (2010). How much do we really know about criminal deterrence? The journal of criminal law & criminology, 100(3), 765-824

The first challenge to the capital punishment in India arose in the 1973 case of *Jagmohan Singh v. State of Uttar Pradesh*, where the Supreme Court upheld the validity of the death penalty, ruling that it did not violate Article 21. The Court reasoned that the death sentence could only be pronounced after the detailed recording and evaluation of aggravating and mitigating circumstances, ensuring that convict's right to life was not arbitrarily taken away.⁸

However, the critics argue that execution is ultimate and irrevocable punishment and the risk of executing an innocent person can never be eliminated. Hence, it becomes crucial to engage with this deliberation.

Historical background in India

Capital Punishment, one of the most contentious and debated forms of punishment, has a long and complex history, with its roots tracing back to ancient

⁸ *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947 (India)

times and continuing through the colonial period and into the modern India. The death penalty was prescribed in ancient legal codes, like the *Manusmriti*, and was also retained by the British in the Indian Penal Code (IPC), 1860. Moreover, it is also included in the *Bhartiya Nyaya Sanhita* (BNS) as a method of punishment.

In *Manusmriti*, one of the earliest law texts, capital punishment was deemed necessary for maintaining the social harmony and was considered a deterrent to crime. Manu, the author of the text, argued that the severe punishments, including capital punishment, were essential for deterring individuals from committing grievous crimes. The principle of *Dand Niti* (justice through punishment) was central to the legal philosophy of the time.⁹

Based on the amalgamation of deterrent and reformatory theories of punishment, Indian criminal law holds that the purpose of punishment is to both instill fear in criminals

⁹ Kautilya, Arthashastra, trans. R. Sharnasastry (Bangalore: Government Press, 1915)

and provide them with the chance to change.

Beyond the statutory framework, religious and customary legal systems offer varied perspectives on the concept and application of capital punishment, offering insights that require deeper consideration.

According to the ***Arthashastra***, written by *Kautilya* (also known as *Chanakya*), the chief adviser to *Emperor Chandragupta Maurya*, the death penalty was reserved for the gravest offences, such as espionage, murder and high treason. It also provided that the ruler had the authority to execute wrongdoers in order to preserve the integrity and security of the state. Although Hindu law allowed capital punishment, it was not viewed solely as an act of revenge, but also as a means of correcting society.¹⁰ The law emphasized retributive justice, wherein the severity of the punishment matched the gravity of the crime. It allowed

¹⁰ P.V. Kane, *History of Dharmasastra*, Vol. III (Bhandarkar Oriental Research Institute, 1973) 947-949

for the possibility of mitigating circumstances, such as the criminal's repentance or the potential for reform.

The advent of Islamic rule in medieval India brought significant changes to the legal system, marked by the incorporation of Sharia law. Sharia law, which is derived from the *Quran* and *Hadith*, included provisions for capital punishment, especially for crimes considered *Hadd* (serious offences with fixed punishments prescribed in the *Quran*) and *Qisas* (crimes requiring retribution, often through 'an eye for an eye' principle).¹¹ Under Islamic law, capital punishment was ordained for certain serious offences such as murder, theft, apostasy and rebellion. The Mughal Empire, which administered a significant portion of India from 16th to the 19th century, adhered to these legal principles. However, the implementation of the death penalty varied considerably depending on the emperor's

¹¹ Torture and Public Executions in the Islamic Middle Period (Eleventh – Fifteenth Centuries), The Cambridge World History of violence, Cambridge University Press

outlook on justice. Akbar, for instance, was known for his tolerant approach, frequently favoring imprisonment or exile over execution. In contrast, Aurangzeb enforced harsher punishments in strict conformity with Sharia law.

With the advent of British rule, this traditional framework saw continuity through the enactment of Indian Penal Code (IPC) in 1860. It became the cornerstone of India's criminal justice system. The IPC stipulates the death penalty in cases such as murder, waging war against the state and treason. During the British era, capital punishment was widely used to dissent the public opinion and to control the population. Many freedom fighters, including notable figures like Bhagat Singh, Rajguru and Sukhdev, were executed by the British for their involvement in the nationalist movement. These executions fueled widespread resentment and protests against colonial rule, further solidifying the

association between the death penalty and political oppression.

Following the independence in 1947, the newly established Republic of India inherited the colonial legal system, including IPC, and the IPC continued to prescribe capital punishment for certain offences. However, the doctrines have undergone certain amendments with time. The Indian constitution, which came into effect in 1950, provides people with right to life and personal liberty, which was earlier neglected. Although, the constitution framers did not abolish the death penalty outright, leaving it to be regulated by the judiciary.

In this way, while capital punishment was once a common and widely accepted method of punishing offenders for heinous crimes, its application and justifications have shifted dramatically over the years.

Assessing the appropriateness of capital punishment

The decision to impose capital punishment must be guided by thorough and principled assessment of various factors. Courts are obligated to examine the nature and gravity of the crime, the circumstances under which it was committed, and the mental and emotional state of the offender. The Supreme Court's formulation of the "rarest of rare" doctrine serves as a settled judicial precedent. It mandates a balancing of aggravating and mitigating circumstances in order to serve justice to the people¹². Some of the factors that require meticulous observations are listed in the following table:

Mitigating factors	Aggravating factors
Mental or emotional status of culprit	Pre planning for an offence
Age of accused	Modus operandi (manner in which the crime was committed)

¹² Bachan Singh v. State of Punjab, (1980) 2 SCC 684

Whether accused can be reformed	Helpless state of victim
Whether accused acted under coercion	Shocking nature and horrendous details of crime

In determining the appropriateness of capital punishment, courts are required to undertake the balance between mitigating and aggravating factors.¹³ Aggravating factors- such as extreme brutality, premeditation or impact on public order- serve to justify the imposition of death penalty. While mitigating factors, on the other hand, such as possibility of reform, lack of previous criminal records or socio-economic hardship, operate to reduce the moral and legal culpability of the offender.

In case the mitigating circumstances outweigh the aggravating circumstances, the court may consider life imprisonment a more appropriate sentence. The main objective is to ensure that the death penalty

¹³ Ashworth, Andrew, Sentencing and Criminal Justice, Cambridge University Press, 2015

is reserved exclusively for cases where no lesser punishment would suffice in the interest of justice.

However, many people believe that death is the only punishment for murder that would meet the ends of justice. Immanuel Kant believed that every murderer deserves to die on the grounds that the loss of life is incomparable to any penalty and allows them to remain alive, including life imprisonment¹⁴. This idea is known as retributive theory (“an eye for an eye”).

Retributive theory of punishment is a normative framework which posits that punishment is justified as a morally appropriate to criminal conduct.¹⁵ It is grounded in the principle of just deserts, wherein the offender is punished in proportion to the gravity of the offence, irrespective of any consequential benefits such as deterrence or rehabilitation. The theory underscores the intrinsic value of

¹⁴ Immanuel Kant, *The Metaphysical Elements of Justice*, Translated by John Ladd, Hackett Publishing, 1999, pp. 100 – 102.

¹⁵ Andrew von Hirsch, *Censure and Sanctions*, Oxford University Press, 1993, pp. 9 – 15

holding offenders accountable through proportionate punishment as a means of upholding the rule of law and societal order.

Punishment may be judged as fair or unfair in terms of their degree of reciprocity and proportionality to the offense. The justifications to the punishment may include retribution, deterrence, rehabilitation and incapacitation. The punishment may differ in terms of severity or may include sanctions such as reprimands. This distinction gives rise to several theories to justify punishing someone.

Deterrence theory

The deterrent theory is one of the most widely accepted theories in criminology and is rooted in classical school of criminology. It posits that imposing punishment serves to discourage individuals from committing crimes. This theory aims to reduce crime by creating a fear of consequences, thereby preventing potential offenders from

engaging in criminal activities. The main idea is that if individuals perceive that the punishment for a crime is serious enough, they will be less likely to commit that crime.

Deterrence can further take two forms¹⁶.

When the aim is to deter the general public from committing crimes by demonstrating the consequences of criminal behavior, it is known as general deterrence. While on the other hand when the focus is on an individual to deter him from reoffending, believing that the punishment is severe enough to stop that person from committing the same offence, in future is called specific deterrence. In essence, the deterrence theory of punishment emphasizes punishment as a preventive tool to discourage criminal behavior. However, the effectiveness and reliability of this theory are subject to the current debate and scrutiny.

Rehabilitation

¹⁶ K.D. Gaur, Textbook on Indian Penal Code, Universal Law Publishing, 2015, pp. 3 - 5.

It is the process of re-educating those who have committed a crime and prepare them to re - enter society. It involves improving a person's physical, mental and social functioning after they've been affected by an injury, illness, disability, or addiction. At its core, this theory aims to turn a criminal into a law- abiding citizen¹⁷.

Rationale behind the imposition of capital punishment

The support and sentencing of capital punishment has been growing in India in the 2010s due to anger over several recent brutal cases of rape, even though actual executions are comparatively rare.¹⁸ Plato saw the death penalty as a means of purification, because crimes are “defilement”. There have been numerous cases that have established the death penalty as the only appropriate recourse to uphold the principles of justice. For

¹⁷ Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (Harvard University Press, 1976) , pp. 14 - 16.

¹⁸ Crime in India report, NCRB

instance, in ***Machhi Singh v. State of Punjab (1983)***, the Supreme Court upheld the death sentence for the accused who brutally murdered 17 people in five different villages in a single night as part of a family feud. The Court held that when the crime is extremely heinous, shows exceptional depravity, and shocks the collective conscience of society, the death penalty becomes a just and proportionate response. This case reinforced the 'rarest of rare' doctrine, asserting that capital punishment may be warranted where the alternative punishment would be unquestionably inadequate. There have been several instances that have rendered capital punishment an appropriate and justified course of action.

For the first time in India, the law commission discussed the death penalty in their 35th law commission report, which concluded that the death penalty must be retained in India.

According to the White House, the efforts to subvert and undermine capital punishment defy the laws of our nation, make a mockery of justice and insult the victims of these horrible crimes.¹⁹ Singapore, Japan and US are the only developed countries that are qualified as only retentionist countries by Amnesty International.

The moral and legal challenges of capital punishment

But at the same time, several questions have been raised concerning the appropriateness of death penalty. Will the punishment of the death penalty amount to murder under section 302 of IPC? Is it appropriate for state to do something that it actually condemns? Can it be guaranteed that an innocent person will never be executed? Is the death penalty a deterrent or a distraction from deeper issues in the justice system? How can we claim to uphold human rights while supporting capital

¹⁹The White House, <https://www.whitehouse.gov>

punishment? Finally, is it justice or vengeance that the death penalty serves?

Such questions compel us to reconsider whether the death penalty truly aligns with the principles of justice and humanity.

Critics even argue that the death penalty brutalizes society and normalizes violence and making it more likely to be used in other contexts. Moreover, there has been no credible evidence to support the notion that there has been a decrease in crime rates due to increased executions. Surprisingly, the situation had been opposite in Canada, where the murder rate was less than half than that in 1976, when the death penalty was abolished.

Some even argue that death penalty does not bring true closure or healing to victim's family. Many families who have lost their loved ones have expressed that the death penalty cannot genuinely relieve their suffering. It just extends that suffering to the family of the condemned person.

“Revenge is not the answer. The answer lies in reducing violence, not causing more death.” said Marie Deans, whose mother-in-law was murdered in 1972²⁰.

Amnesty International declares that the death penalty breaches human rights, specifically, the right to life and right to live free from torture or cruel, inhumane or degrading treatment as punishment. The opponents of death penalty regard it as barbarous and criticize it for its irreversibility. They argue that the risk of executing an innocent person, coupled with systemic biases, renders its application fundamentally unjust. Furthermore, they contend that capital punishment fails to serve as an effective deterrent to crime, thereby undermining its justification in modern legal systems. They often cite instances where apex courts have acknowledged the fallibility of the criminal justice system, such as the Supreme Court

²⁰ Death Penalty, Amnesty international, <https://www.amnestyinternational.org>

of India's admission that numerous death sentences have later been overturned due to wrongful convictions. Internationally, many countries have moved towards abolition with over two thirds of nations either having abolished the death penalty in law or in practice, reflecting a growing global consensus against its use. The Philippines reinstated death penalty in 1993 following its abolition in 1987, but subsequently abolished it once more in 2006. Such legislative reversal underscores the evolving standards of justice and human rights, highlighting the increasing discomfort with the irreversible nature and potential misuse of capital punishment.

Some abolitionists argue that retribution is simply revenge and cannot be condoned. They argued that life imprisonment without parole is a sufficient substitute. In China, during the time of Tang dynasty, death penalty was replaced with punishment of severe scourging with the thick rod or exile.

However, it was reinstated only 12 years later in response to the An Lushan rebellion, which resulted in the death of millions and underscored the catastrophic consequences of unchecked state power, serve as a stark reminder of the perils of legitimizing irreversible forms of punishment.

The An Lushan Rebellion, marked by indiscriminate executions and mass suffering, exemplifies the dangers of excessive punitive measures by the state – drawing a parallel to contemporary concerns that capital punishment, once imposed, allows no room for correction, even in the face of judicial error or systemic biases.²¹

Ultimately, the persistence of capital punishment stands in stark contrast to evolving legal and moral standards, demanding a re – evaluation of its place in a justice system that aspires to fairness,

²¹ Upinder Singh, A History of Ancient and Medieval India: From the Stone Age to the 12th century (Pearson Education India, 2008), pp. 552 – 554.

accountability, and the preservation of human dignity.

Conclusion

In conclusion, this paper set out to explore whether imposing death penalty on an offender is considered justice or revenge. This paper analyzed the ongoing debate over capital punishment in India. The findings revealed that the death penalty remains a deeply divisive issue, with proponents arguing that it serves as a deterrent and delivers justice for heinous crimes, while critics contend that it is more rooted in retribution than in principles of justice.

Through an examination of legal principles, case laws, and public opinion, this study has highlighted the multifaceted nature of capital punishment in the Indian context. While the legal system emphasizes justice, emotional responses from society and media narratives sometimes blur the line between retributive punishment and judicial

fairness. This ambiguity raises critical concerns about consistency, fairness, and the potential influence of public sentiment in death penalty cases.

Professor Robert Blecker once remarked that the punishment must be painful in proportion to the crime²². This underscores that while there is some support for the death penalty, particularly in cases of terrorism or particularly brutal crimes, concerns about wrongful convictions, human rights violations, and the potential for disproportionate application persist. Moreover, the argument that the death penalty does not conclusively deter crimes remains contentious.

In *Ediga Anamma v. state of Andhra Pradesh* (1994), the Supreme Court of India laid down the principle that life imprisonment for offence of murder is the rule and capital punishment is an exception in certain cases. It becomes evident from the findings that

²² Robert Blecker, *The Death of Punishment: Searching for Justice Among the Worst of the Worst* (2013)

there has been a shift in the views of society towards capital punishment. In this evolving landscape, Articles 72 and 161 of the Indian Constitution – empowering the President and the Governors respectively to grant pardons, reprieves, or remissions – serves as vital constitutional safeguards, ensuring that the executive can correct judicial errors and temper justice with mercy when the rigidity of law may fall short of fairness.

Given the moral, legal, and emotional complexities surrounding capital punishment, it is crucial for the justice system to remain anchored in objectivity and constitutional values. As India continues to evolve, the effectiveness of death penalty as a deterrent remains uncertain, especially when weighed against the potential for judicial error and the availability of life imprisonment, which already addresses concerns of recidivism. A continued examination of its role, guided by data, jurisprudence and ethical reasoning, is

essential to ensure that the pursuit of justice does not devolve into an act of retribution.

“In a system committed to justice, the true measure is not how harshly we punish, but how wisely we choose to”

